

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

CIANBRO CORPORATION

Employer

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 90

Petitioner

Case No. 34-RC-2014

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner claims to represent certain employees of the Employer; and no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act.

The Petitioner seeks to represent a unit of approximately ten Connecticut-licensed electricians and Connecticut-indentured apprentices employed by the Employer as electricians in the State of Connecticut. The Employer has moved to dismiss the petition because it will cease employing electricians at its sole Connecticut project located at the Electric Boat shipyard in Groton, Connecticut, by mid-March 2003, and that once the Electric Boat project ends, it will have no further work in Connecticut for the foreseeable future.

For the reasons noted below, I find that the imminent cessation of the Employer's current operations at the Electric Boat jobsite and the lack of future projects requiring electricians in Connecticut is sufficiently certain that it would not effectuate the purposes and policies of the Act to conduct an election at this time. Accordingly, I shall grant the Employer's motion to dismiss the petition.

1. The Employer's Operations

The Employer is a general contractor with operations in thirteen states. Its corporate headquarters is located in Pittsfield, Maine, and it has regional offices in Bloomfield, Connecticut, Portland, Maine, and Baltimore, Maryland. The Employer specializes in bridge and marine projects, and also performs refueling and decommissioning operations at nuclear power plants and commercial construction for clients in the chemical, paper and pulp industry. The majority of its work is done in Maine, New York, and Massachusetts. There is no history of collective bargaining involving the petitioned-for employees.

The Employer's regional office in Bloomfield, Connecticut, known as the Southern New England regional office, is responsible for obtaining and overseeing all projects in Massachusetts, New York, Rhode Island, Connecticut, Vermont, and Northern Pennsylvania. Primarily responsible for the overall operations of the Southern New England region is Regional Industrial Manager Thomas Clarke. Reporting to Clarke are Regional Human Resources Manager Wes McGibny and Regional Staffing Specialist Alan Gamel, both of who exclusively interview and hire craft employees for projects arising within the Southern New England region. The record reveals that electrical work typically accounts for less than 10% of the Employer's craft hours in the Southern New England region. Once a project is complete, the Employer re-assigns craft employees, including electricians, to other regional projects depending upon an employee's willingness to travel. If the employee is unwilling to travel to the nearest ongoing project, the employee is laid off. All employees regardless of their regional location share common benefits and are subject to the same policies and procedures. However, many working conditions, including immediate supervision, compensation, work hours, discipline, performance evaluations, and work and safety rules, are established at the project level and therefore vary from project to project.

Since January 1, 1998, the Employer has had a total of seven projects requiring the employment of electricians in the State of Connecticut, including the Electric Boat project. During the past three years, the Employer has subcontracted approximately half of this electrical work.

2. The Employer's current and anticipated Connecticut work

According to Clarke, at the time of the hearing, the Employer's sole project in the State of Connecticut requiring the employment of electricians was the Electric Boat project. This project, which began in October 2002, involves the fabrication and installation of a mechanical electrical enclosure for the Electric Boat Division of General Dynamics, which designs and builds nuclear submarines. At the time of the hearing, there were 10 electricians employed by the Employer on the Electric Boat project. According to Clarke, the electrical portion of the project is currently scheduled to be completed by approximately March 15, 2003. In order to meet that deadline, an unspecified number of additional electricians will be employed through the end of February. In addition, the Employer recently added a second shift, which it then subcontracted to an electrical subcontractor. Thus, according to Clarke, by or on March 15 the Employer will either lay-off or re-assign all of its electricians presently working at the Electric Boat jobsite to projects in other states.

Clarke further testified that the Employer has no other awards, contracts or work requiring the employment of electricians in Connecticut. Clarke admitted that the Employer does have a proposal pending that includes the performance of electrical work on a power plant located in Montville, Connecticut. More specifically, the Employer submitted an "informal bid" for such work to Rand Whitney in November 2002. However, there is no evidence that Rand Whitney will actually go ahead with the project or, if it does so, that the Employer will be awarded any work. In this regard, the evidence shows that the Employer previously submitted a proposal on the same project about 18 months earlier, and that the project did not go forward. In addition, there are currently at least four rival bidders for the Rand Whitney project, including one, BE&K, that may have an advantage in the bidding process because it is currently the facility's maintenance manager. Moreover, even if the Employer is awarded the work, Clarke estimates that the Employer could not begin construction for at least nine months in

order to acquire the requisite State permits. Thus, according to Clarke, at best the Employer would not begin hiring electricians for the Rand Whitney project until at least January 2004, and such hiring would only occur if the Employer decides not to subcontract the electrical portion of the project.

The Union proffered the testimony of two employees who have worked for the Employer at the Electric Boat jobsite since October 2002. Both witnesses testified that during their initial interview, Gamel informed them that the Employer would assign them to other projects in Connecticut, including the Rand Whitney project, following the cessation of the Electric Boat project. In addition, according to one of these witnesses, in November 2002, Walter Stefanyk, a disputed supervisor, offered all electricians at the Electric Boat jobsite the opportunity to work at another of the Employer's Connecticut-based projects located at the Wallingford Powerhouse. According to the witness, that offer was uniformly rejected by all the electricians because the Employer paid \$2 more per hour at the Electric Boat jobsite. According to the Employer's records, it completed a project at the Wallingford Powerhouse in September 2002. There is no evidence that the Employer is currently performing any work at that project.

The Petitioner's witnesses also proffered testimony that, in their opinion, the Electric Boat project is slightly behind schedule and may not end by March 15. In this regard, Clarke acknowledged only that "minor electrical changes" might be performed at the Electric Boat project after March 15.

3. Conclusion

Based upon the above and the record as a whole, I find that the cessation of the Employer's operations at the Electric Boat project is sufficiently imminent and certain that it would not effectuate the purposes and policies of the Act to conduct an election at this time. While the Union has presented some evidence to show that the Electric Boat project may not end precisely by March 15, 2003, there is no evidence to show that this project will be significantly lengthened beyond that date. In this regard, it is well established that where an employer's operations are scheduled to terminate within three to four months, no useful purpose is served by directing an election. See, e.g., *Davey McKee Corp.*, 308 NLRB 839 (1992); *Larson Plywood Company, Inc.*, 223 NLRB 1161 (1976); *M.B. Kahn Construction Co.*, 210 NLRB 1050 (1974); *General Motors Corp.*, 88

NLRB 119 (1950). Moreover, there is no evidence that the Employer will have any other work requiring the employment of electricians in Connecticut after March 15, 2003, or that there is any reasonable certainty that it will obtain work in Connecticut soon after that date. Rather, the record shows that whether the Employer obtains future work requiring the employment of electricians in Connecticut, and the dates of such work, is too speculative to warrant an election at this time. *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974); *Cooper International, Inc.*, 205 NLRB 1057 (1973).

I shall, therefore, grant the Employer's motion to dismiss the petition.¹ However, should the petitioned-for unit remain in existence for a substantially longer period of time than is now anticipated, or should the Employer acquire additional construction projects in the State of Connecticut in the near future, I will entertain a motion by the Petitioner to reinstate the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed in this is dismissed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 7, 2003.

Dated at Hartford, Connecticut this 21st day of February, 2003.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

347-8020-8050

¹ In view of my decision to dismiss the petition, I find it unnecessary to address the Employer's contention that the unit must be limited to the Electric Boat jobsite, or the Petitioner's contention that Walter Stefanyk and George Mirakiam should be excluded from the unit as supervisors.